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ABSTRACT

This document is one of six discussion papers prepared for the Wisconsin Legislative Council's Special Committee on Crimes Against Children. The introduction explains the committee's task of conducting a thorough examination of state laws relating to crimes against children, reviewing major policy issues affecting those laws to determine whether substantive changes are needed in various statutory provisions and reorganizing the laws. This paper deals specifically with regulatory offenses directed at children. It is organized into seven parts which cover the areas of: (1) the prohibition against furnishing a pistol to a minor; (2) the statute relating to concealing the death of a child; (3) the prohibition against receiving property from a child; (4) employment regulations relating to minors; (5) pupil discrimination, hazing, and strip searches by school employees; (6) regulations relating to infant blindness and lead poisoning; and (7) laws relating to the participation of minors in boxing exhibitions. For each of these issues, there is a section explaining current law and a section giving suggestions for statutory revisions. Copies of the statutes covered in the report, arranged in numerical order, and a copy of ss. 939.50 to 939.52, which prescribe the basic criminal penalty classification system used in the Criminal Code are appended. (NB)

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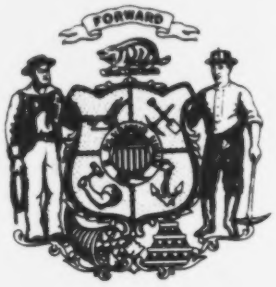

CRIMES AGAINST CHILDREN

F. REGULATORY OFFENSES DIRECTED AT CHILDREN

DISCUSSION PAPER 86-1F

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Wisconsin Legislative Council Staff — Madison, Wisconsin

Special Committee on Crimes Against Children — November 5, 1986

DISCUSSION PAPER 86-1F*

CRIMES AGAINST CHILDREN

F. REGULATORY OFFENSES DIRECTED AT CHILDREN

INTRODUCTION

Discussion Paper 86-1F is the sixth and last of a series of Discussion Papers prepared for the Legislative Council's Special Committee on Crimes Against Children. The Special Committee is conducting a thorough examination of state laws relating to crimes against children, including:

1. Reviewing major policy issues affecting these laws to determine whether substantive changes are needed in such statutory provisions as abuse of children; sexual assault; child enticement; lewd and lascivious conduct; abduction; incest; abandonment; and others.

2. Reorganizing these laws, to the extent appropriate, so that like provisions are logically grouped; ambiguities and conflicts in the present laws are reconciled; and relevant Supreme Court and Court of Appeals decisions and Attorney General opinions are codified.

The Special Committee review will be based, in part, on a project undertaken, at the request of Senator Barbara Ulichny, by the University of Wisconsin-Madison Law School and Extension. This project resulted in a preliminary draft proposal entitled "Crimes Against Children: A Proposed Chapter of the Wisconsin Statutes" (July 1985), prepared by Attorney Ronni G. Jones, under the supervision of a Law School/Extension faculty advisory committee. The draft proposal (hereafter referred to as the Law School Proposal) suggests certain policy changes in various statutes relating to crimes against children and suggests the creation of a separate chapter of the statutes on crimes against children, organized by "the interest of the child sought to be protected."

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*This Discussion Paper was prepared by Shaun Haas, Senior Staff Attorney, Don Salm and Pam Russell, Staff Attorneys, Legislative Council Staff.

For Special Committee discussion purposes, the issues and statutes to be examined will be grouped into the following separate Discussion Papers which will describe the statutes under discussion and summarize suggestions for changes in these statutes:

Discussion Paper 86-1A: Physical and Psychological Abuse: The Paper will cover ss. 940.201, abuse of children; 940.203, sexual exploitation; and 940.225, sexual assault.

Discussion Paper 86-1B: Sexual Morality: The Paper will cover ss. 944.06, incest; 944.12, enticement for immoral purposes; 944.15 fornication; 944.17, sexual gratification; 944.20 and 944.21, lewd behavior; 944.25, exposure to harmful materials; and 944.32, soliciting prostitutes.

Discussion Paper 86-1C: Physical Neglect: The Paper will cover ss. 940.27, failure to support; 940.28, abandonment of a young child; and 940.29, abuse of residents of facilities.

Discussion Paper 86-1D: Interfering With Custody: The Paper will cover ss. 940.32, abduction; 946.71, interference with custody of child; 946.715, interference by parent with parental rights of other parent; and 946.716, unauthorized placement for adoption.

Discussion Paper 86-1E: Contributing to Delinquency of a Minor: The Paper will cover ss. 947.15, contributing to delinquency; 947.08, crime comics; 125.07, serving alcohol beverages to minor; 161.46, distributing drugs to minor; 943.34, receiving stolen property from minor; and 946.46, encouraging probation or parole violation.

Discussion Paper 86-1F: Regulatory Offenses Directed at Children: The Paper will cover ss. 103.19 to 103.32 and 103.64 to 103.86, employment regulations; 118.13, pupil discrimination; 146.01, infant blindness; 151.03, lead poisoning; 444.09 (4), boxing exhibitions; 940.26, hazing; 941.22, furnishing a pistol to a minor; 942.02, strip search by school employe; 946.63, concealing death of a child; and 943.35, receiving property from a child.

Discussion Paper 86-1F is organized as follows: Part I covers the prohibition against furnishing a pistol to a minor; Part II discusses the statute relating to concealing the death of a child; Part III covers the prohibition against receiving property from a child; Part IV covers employment regulations relating to minors; Part V covers pupil discrimination, hazing and strip searches by school employes; Part VI discusses regulations relating to infant blindness and lead poisoning; and Part VII discusses laws relating to the participation of minors in boxing exhibitions. The Appendix contains copies of the statutes covered in the Discussion Paper, arranged in numerical order, plus a copy of ss. 939.50 to 939.52, which prescribe the basic criminal penalty classification system based in the Criminal Code.

PART I

FURNISHING A PISTOL TO A MINOR

A. EXPLANATION OF CURRENT LAW

1. Description of Furnishing a Pistol to a Minor Statute

Under s. 941.22, Stats., any person who intentionally sells, loans or gives a pistol to a minor is guilty of a Class A misdemeanor (punishable by a fine not to exceed $10,000 or imprisonment not to exceed nine months, or both). "Pistol" is defined to mean "any firearm having a barrel less than 12 inches long." The prohibition against furnishing a pistol does not apply to an adult who transfers a pistol to a minor for use only in target practice under his or her supervision.

Law enforcement officers are required to take from a minor any pistol found in the minor's possession [s. 941.22, Stats., as affected by 1985 Wisconsin Act 135].

2. Discussion of Relevant Court Decisions and Other Interpretations of the Law

There are no relevant court decisions or other interpretations of s. 941.22, Stats.

B. SUGGESTIONS FOR STATUTORY REVISIONS

1. Background

The Law School Proposal does not recommend any substantive changes in the statute on furnishing a pistol to a minor statute. The Law School Proposal does recommend the technical change of substituting the term "child" for "minor," which appears in the current statute. "Child" is defined in the Law School Proposal, for purposes of crimes against children, to mean a person who has not attained the age of 18 years.

Similar statutes in other states encompass weapons other than pistols. Legislation introduced in the 1985 Legislative Session, based on a Massachusetts law, proposed to expand the scope of s. 941.22, Stats., to apply to "dangerous weapons" (1985 Assembly Bill 736). The term "dangerous weapon" was defined in Assembly Bill 736 to include electric weapons, metallic knuckles and various devices, commonly referred to as martial arts weapons. Assembly Bill 736, as amended by Assembly

Substitute Amendment 1, was recommended for passage by the Assembly Committee on Criminal Justice and Public Safety; it failed to pass, pursuant to 1985 Assembly Joint Resolution 1.

Statutes in other states contain special criminal prohibitions against pupils carrying dangerous weapons on school premises (e.g., Minnesota and Tennessee).

2. Suggestion

The Special Committee could consider:

a. Expanding the scope of s. 941.22, Stats., to apply to other dangerous weapons, in addition to pistols.

b. Creating a special criminal prohibition against pupils carrying firearms or other dangerous weapons on school premises.

c. Making no substantive changes in the furnishing a pistol to minor statute.

[For the specific language of the technical change suggested in the Law School Proposal, see the following provisions of the Proposal: s. 960.02 (3), Definitions; and s. 960.35, Transferring a Pistol to a Child.]

PART II

CONCEALING THE DEATH OF A CHILD

A. EXPLANATION OF CURRENT LAW

1. Description of Concealing the Death of a Child Statute

Under s. 946.63, Stats., any woman who conceals the corpse of any issue of her body with intent to prevent a determination of whether it was born dead or alive is guilty of a Class E felony (punishable by a fine not to exceed $10,000 or imprisonment not to exceed two years, or both) [s. 946.63, Stats.].

2. Discussion of Relevant Court Decisions and Other Interpretations of the Law

There are no relevant court decisions or other interpretations of s. 946.63, Stats.

B. SUGGESTIONS FOR STATUTORY REVISIONS

1. Background

The Law School Proposal does not recommend any substantive changes in the statute on concealing the death of a child.

2. Suggestion

The Special Committee could consider making no substantive changes in concealing the death of a child statute [s. 946.63, Stats.].

[For the specific language suggested in the Law School Proposal, see the following provision of the Proposal: s. 960.15, Concealing the Death of a Child.]

PART III

RECEIVING PROPERTY FROM CHILDREN

A. EXPLANATION OF CURRENT LAW

1. Description of Receiving Property from Children Statute

Under s. 943.35, Stats., it is a Class A misdemeanor (punishable by a fine not to exceed $10,000 or imprisonment not to exceed nine months, or both):

a. For a dealer in secondhand articles or junk, to purchase any personal property, except old rags and waste paper, from any minor, without the written consent of his or her parent or guardian.

b. For a pawnbroker or other person who loans money and takes personal property as security for the money to receive personal property as security for a loan from any minor, without the written consent of his or her parent or guardian.

2. Discussion of Relevant Court Decisions and Other Interpretations of the Law

There are no relevant court decisions or other interpretations of s. 943.35, Stats.

B. SUGGESTIONS FOR STATUTORY REVISIONS

1. Applicability

a. Background

The current statute on receiving property from a child: (i) applies only to dealers in secondhand articles or junk and pawnbrokers; and (ii) does not have a dollar limit on its applicability. The Law School Proposal recommends that this statute be made applicable to any person, not just a junk dealer or a pawnbroker, who receives personal property from a child if:

(i) The property does not exceed $500 in value; and

(ii) The person gives or lends the child money or an item of value in return for the property without the written consent of "the person responsible for the child's welfare."

"Person responsible for the child's welfare" is defined in s. 960.02 (8) of the Law School Proposal, in the general definitions section, to include "the child's parent, guardian...[or] other person legally responsible for the child's welfare.

Apparently, the reason the Law School Proposal would make this statute applicable only to receipt of property of $500 or less in value is because of the Proposal's suggested changes in s. 943.34, Stats., relating to receiving stolen property from a child; discussed in Discussion Paper 86-1E. Under the Proposal, the receipt of stolen property statute would specify that it is prima facie evidence that the items were stolen and the defendant knew it, if there is: (i) proof that the value of an item received from a child was over $500; and (ii) proof that there was no consent to the delivery by the person responsible for the child's welfare.

Thus, if the property received from a child statute [s. 943.35, Stats.] is changed to include items valued at $500 or more, the person receiving the property could be prosecuted under s. 943.34, the receipt of stolen property statute. However, the "less than $500" limit in s. 943.34, Stats., on receipt of property from a child limits the prosecutor's charging options. Specifically, even if the evidence is clear that property valued at more than $500 is not stolen, the prosecutor would not be permitted to charge the person under s. 943.35, Stats., receiving property from a child (a misdemeanor), rather than s. 943.34, Stats., receiving stolen property from a child (a felony) because the value of the property exceeds $500.

b. Suggestion

The Special Committee could consider:

(i) Making s. 943.35, Stats., on receiving property from children, applicable to any person who receives such property. The Special Committee could also consider deleting the specific references to junk dealers, pawnbrokers and other persons taking personal property as security. For example, the statute could be revised to make those persons, whose business it is to receive property as security, subject to more severe penalties for receiving property from children.

(ii) Making s. 943.35, Stats., on receiving property from a child, applicable only to the receipt of property valued at $500 or less. The Special Committee could consider: (a) not establishing any dollar limit on the value of the property received (i.e., same as current law); or (b)

establishing different penalty levels based on the value of the property received (i.e., similar to the dollar limits set forth in s. 943.34, Stats., receipt of stolen property from children, as discussed in Discussion Paper 86-1E).

[For the specific language in the Law School Proposal, see the following provisions of the Proposal: s. 960.33, Receiving Stolen Property from a Child; and s. 960.36, Receiving Property from a Child.]

2. Reduced Penalty

a. Background

The Law School Proposal recommends reducing the penalty for a violation of the receiving property from a child statute from the current Class A misdemeanor to a Class B misdemeanor (punishable by a fine not to exceed $10,000 or imprisonment not to exceed 90 days, or both), because: (i) the Proposal "expands the coverage of those who can be prosecuted to anyone who buys or trades for value with a child"; and (ii) "children today have so much opportunity to legitimately buy and sell goods."

b. Suggestion

The Special Committee could consider reducing the penalty for a violation of the receiving property from a child statute to a Class B misdemeanor as suggested in the Law School Proposal.

[For the specific language suggested in the Law School Proposal, see the following provisions of the Proposal: s. 960.02 (8), Definitions; s. 960.33, Receiving Stolen Property from a Child; and s. 960.36, Receiving Property from a Child.]

PART IV

EMPLOYMENT REGULATIONS INVOLVING MINORS

A. EXPLANATION OF CURRENT LAW

1. Employment of Children in Shows

a. Description of Employment of Children in Shows Statute

Section 103.19, Stats., prohibits a licensing authority from granting a license for a theatrical exhibition or public show in which children under 15 years of age are employed as acrobats, contortionists or in any feats of gymnastics or equestrianism when employment of children for these purposes results in corruption of the children's morals or impairment of their physical health. Violation of this section is punishable by a fine not to exceed $100 [s. 103.20, Stats.].

b. Discussion of Relevant Court Decisions and Other Interpretations of the Law

There are no relevant court decisions or other interpretations of s. 103.19, Stats.

2. Employment of Minors in Street Trades; Loitering Around Newspaper Premises

a. Description of Current Law Relating to Employment of Minors in Street Trades

Sections 103.21 to 103.32, Stats., set forth various regulations of the employment of minors in street trades. A "street trade" is defined as:

> The selling, offering for sale, soliciting for, collecting for, displaying or distributing any articles, goods, merchandise, commercial service, posters, circulars, newspapers or magazines, or the blacking of boots, on any street or other public place or from house to house.

The statutes prohibit minors under 12 years of age from being employed or permitted to work at any time in a street trade. However, a minor under 12 years of age may work in a fund-raising sale for a nonprofit organization, a public school or a private school with written

approval from the minor's parent or guardian. Minors under nine years of age must be physically accompanied by a parent or a person at least 16 years of age. The statutes direct the Department of Industry, Labor and Human Relations (DILHR) to establish reasonable hours of work, to issue permits and identification cards and to enforce the standards for the employment of minors 12 years of age or over in street trades.

Employers in violation of any of these statutory provisions or related Administrative Code provisions are subject to a fine of not less than $10 nor more than $100 per offense or imprisonment for not more than 30 days. A parent or guardian of a minor employed in violation of these provisions or related Administrative Code provisions is subject to a fine of not less than $5 and not more than $25 per offense or imprisonment for not more than 30 days.

Under a separate provision, a newspaper publisher or printer is prohibited from allowing any minor, during school hours, to loiter or remain around premises where newspapers or magazines are printed, assembled or prepared for sale or sold. Violation of this section is a misdemeanor punishable by a fine of not less than $10 nor more than $100 or imprisonment for not more than 30 days [s. 103.30, Stats.].

b. Discussion of Relevant Court Decisions and Other Interpretations of the Law

There are no relevant court decisions or other interpretations of ss. 103.21 to 103.32, Stats.

3. General Standards for Employment of Minors

a. Description of General Standards Relating to Employment of Minors

Under ss. 103.64 to 103.82, Stats., minors are generally not permitted to work during hours of required school attendance or in any place of employment dangerous or prejudicial to the life, health, safety or welfare of the minor or where the nature of the work is such that employment of the minor may be dangerous to other employes or frequenters of the premises. Minors may not be permitted to work in excess of statutorily-fixed hour limitations. These limitations include:

(i) No minor may be employed or permitted to work at any gainful occupation other than domestic service or farm labor for more than eight hours in any one day nor more than 40 hours for more than six days in any one week, nor during hours of compulsory school attendance.

(ii) No minor under 16 may be employed or permitted to work in any gainful occupation other than domestic service or farm labor more than 24 hours in any one week or before 7:00 a.m. or after 6:00 p.m., other than in public exhibitions or street trades.

(iii) Employers must allow at least 30 minutes for each meal period and no minor may be employed or permitted to work more than six consecutive hours without a meal period.

In addition, minors may not be permitted to work in most occupations, unless the minor or the employer obtains a permit from DILHR. Permits are not available at all for minors under the age of 14, except that DILHR may grant permits for minors over the age of 12 and under the age of 14 to work in occupations such as school lunch programs, public exhibitions, radio and television broadcasts, modeling and golf caddying. Minors may work, without a permit, in agricultural pursuits and work in and around the home not connected with a business.

Employment of a minor in violation of any of these provisions is subject to a fine of not less than $10 nor more than $100 per offense, or imprisonment of not more than 30 days. In addition, an employer in violation of these provisions is liable for twice the amount of wages paid for hours worked in violation of the law. This liability is payable to the minor.

In lieu of criminal prosecution, DILHR has the option of seeking a civil forfeiture of not less than $10 nor more than $100 per offense.

b. Discussion of Relevant Court Decisions and Other Interpretations of the Law

There are no relevant court decisions of general application or other interpretations of ss. 103.64 to 103.82, Stats.

B. SUGGESTIONS FOR STATUTORY REVISIONS

1. Background

All statutes relating to the employment of minors found in ss. 103.19 to 103.82, Stats., discussed above under Part I, A, provide criminal penalties. These penalties are limited to fines for employing children in shows in violation of s. 103.19. Violations of the employment of minors in street trades statutes and the general conditions of employment for minors statutes are subject to, in addition to fines, imprisonment of not more than 30 days for each offense. The provisions relating to employment of minors in street trades and general conditions of employment for minors

authorize DILHR, as the enforcement authority for these statutes, to impose either a civil forfeiture or a criminal penalty in any case under any of these statutes.

The Law School Proposal recommends that all statutes dealing with employment of a minor be decriminalized. The proposal notes that, since these statutes have all been reconsidered by the Legislature since 1973 and the criminal penalties were retained upon reconsideration in all cases, the Legislature may have intended that violations of these statutes should continue to be criminally proscribed.

2. Suggestion

The Special Committee could consider decriminalizing the regulatory statutes relating to employing children in shows, employing minors in street trades and setting forth general conditions of employment for minors. This could be accomplished by specifying that violations are to be subject to civil forfeitures rather than fines and by repealing the option of punishment by imprisonment for violations of the employment of minors in street trades and general employment of minors statutes.

[For the discussion of these provisions in the Law School Proposal, see pages 1 to 4 of the Proposal.]

PART V

EDUCATIONAL DEVELOPMENT

A. EXPLANATION OF CURRENT LAW

1. Pupil Discrimination

a. Description of Statute Prohibiting Pupil Discrimination

The current pupil discrimination statute, s. 118.13, Stats., was created by 1985 Wisconsin Act 29 (the Budget Act). Former s. 118.13, Stats., penalized pupil discrimination in public schools by a fine of not more than $100 or imprisonment not less than 30 days nor more than six months, or both; but the current statute does not contain a specific criminal penalty.

However, the general penalty provision in the Criminal Code [s. 939.61, Stats.] is applicable to any act or omission prohibited by statute for which no penalty is expressed. That statute provides for a forfeiture not to exceed $200 for a nonmisdemeanor offense. Since there is nothing in current s. 118.13, Stats., to indicate that pupil discrimination is a criminal offense, any violation would be treated as a nonmisdemeanor offense and subject to a civil forfeiture not to exceed $200 [s. 939.61 (1), Stats.].

Current s. 118.13, Stats., as revised by 1985 Wisconsin Act 29, provides that:

> No person may be denied admission to any public school or be denied participation in, be denied the benefits of or be discriminated against in any curricular, extracurricular, pupil services, recreational or other program or activity because the person's sex, race, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.

Under the statute, each public school board is required to develop written policies and procedures to implement the statute and must submit them to the State Superintendent of Public Instruction as part of its 1986 annual report. Policies and procedures must deal with the receipt and investigation of complaints by school district residents regarding possible violations of the statute, describe how determinations regarding

violations are to be made and be designed to ensure compliance with the statute.

The statute provides that a person who receives a negative determination regarding pupil discrimination may appeal the determination to the State Superintendent. Decisions of the State Superintendent are subject to judicial review under ch. 227, Stats., the administrative procedure act.

The State Superintendent is required to promulgate rules necessary to implement and administer the statute. The Department's biennial report is required to contain information on the status of school district compliance with the statute and school district progress toward providing "reasonable equality of educational opportunity for all pupils in this state." The State Superintendent is authorized to periodically review school district programs, activities and services to determine whether the school boards are in compliance with the statute. The State Superintendent is also permitted to assist school boards to comply with the statute by providing information and technical assistance upon request.

b. Discussion of Relevant Court Decisions and Other Interpretations of the Law

In a 1976 opinion, the State Attorney General opined that the State Superintendent of Public Instruction had not been given the express or implied authority, either under the Constitution or by statute, to determine whether a school is segregated, to order compliance with desegregation procedures, to take legal action to secure compliance or to promulgate administrative rules relating to school desegregation [65 OAG 282, 287 (1976)]. The revision of s. 118.13 by the 1985 Legislature clarifies the authority and responsibility of school officials, including the State Superintendent, to implement the proscriptions against pupil discrimination.

2. Hazing

a. Description of Hazing Statute

Current s. 940.26, Stats., relating to hazing, was enacted in 1983 (1983 Wisconsin Act 356). The statute prohibits any person from intentionally or recklessly engaging in acts which endanger the physical health or safety of a student for the purpose of initiation or admission into or affiliation with any organization operating in connection with a school, college or university. Violation of the statute is subject to a Class A misdemeanor (a fine not to exceed $10,000 or imprisonment not to

exceed nine months, or both), if the prohibited act results in or is likely to result in bodily harm to another. A Class E felony (a fine not to exceed $10,000 or imprisonment not to exceed two years, or both) applies to an act which results in great bodily harm or death to another. The terms "bodily harm" and "great bodily harm" are defined in s. 939.22 (4) and (14), Stats., of the Criminal Code.

b. Discussion of Relevant Court Decisions and Other Interpretations of the Law

There are no relevant court decisions or other interpretations of s. 940.26, Stats.

3. Strip Search by School Employe

a. Description of Strip Search by School Employe Statute

With limited exceptions, current s. 942.02, Stats., which was enacted in 1983 (1983 Wisconsin Act 489), prohibits conducting a strip search of any pupil by an official, employe or agent of any school or school district. Violation of the statute is punishable as a Class B misdemeanor (punishable by a fine not to exceed $1,000 or imprisonment not to exceed 90 days, or both). The exceptions to the general prohibition against strip searches apply to searches of persons who are: (i) serving a criminal sentence; (ii) have been placed in or transferred to a secured correctional facility; (iii) committed, transferred or admitted under the State Mental Health Act or Sex Crimes Law; or (iv) subject to criminal proceedings. There is a general exemption in the statute for conducting a strip search by a law enforcement officer pursuant to statutory authority.

The key terms "school" and "strip search" in the statute are defined. As the term "school" is defined, the statute is limited to persons attending a school which provides an educational program for one or more grades between kindergarten and grade 12.

b. Discussion of Relevant Court Decisions and Other Interpretations of the Law

Section 942.02, Stats., was enacted in 1983 (1983 Wisconsin Act 489, effective May 19, 1984). There are no relevant court decisions or other interpretations of s. 942.02, Stats.

B. SUGGESTIONS FOR STATUTORY REVISIONS

1. Pupil Discrimination

a. Background

In addition to restating the prohibition against pupil discrimination, 1985 Wisconsin Act 29, in its revision of s. 118.13, Stats., obligates school boards to develop written policies and procedures to implement the prohibition and requires the State Superintendent of Public Instruction to assist school boards in carrying out this responsibility. Negative determinations on discrimination matters may be appealed to the State Superintendent, whose decisions are subject to judicial review. The revision of s. 118.13, Stats., by Wisconsin Act 29, eliminated the specific misdemeanor penalty for a violation of the prohibition against discrimination by a member of a school board. Elimination of the specific penalty for a violation of s. 118.13, Stats., causes the general penalty provision in the Criminal Code to be applicable to pupil discrimination. Under this statute, a civil forfeiture not to exceed $200 applies to an act or omission in violation of the pupil discrimination prohibition.

The Law School Proposal, which was developed prior to the revision of s. 118.13, Stats., by 1985 Wisconsin Act 29, recommended that the misdemeanor penalty provisions of the former statute be revised to conform to the classification system for misdemeanor offenses in the Criminal Code. Since the current statute does not contain specific penalties, the penalty recommendations in the Law School Proposal are relevant only to the extent that they raise the issue of whether the reinstatement of specific penalties for a violation of this statute is preferable to reliance on the general penalty provision in the Criminal Code.

b. Suggestion

The Special Committee could consider:

(i) Creating specific criminal penalties applicable to the discriminatory practices prohibited under s. 118.13, Stats., as revised by 1985 Wisconsin Act 29, to replace the general penalty provision of the Criminal Code [s. 939.61, Stats.] which applies in the absence of a specific penalty.

(ii) Making no changes in the present statute, given that s. 118.13, Stats., was substantially revised in the 1985 Legislative Session.

(iii) Revising the statute to clarify which school officials are in a position of authority to violate the pupil discrimination prohibition and to create specific criminal penalties applicable to the violation.

[For the specific language suggested in the Law School Proposal, see the following provision of the Proposal: s. 960.42, Discriminating Against Students.]

2. Hazing

a. Background

Section 940.26, Stats., relating to hazing, applies to any student of a school, college or university, regardless of age. Due to its recent enactment in 1983, the Law School Proposal contains no recommendations for substantive changes in its provisions and does not recommend any changes in the current penalties. However, the general definitions of "bodily harm" and "great bodily harm," as revised in the Law School Proposal, would apply to this statute under the Proposal.

b. Suggestion

The Special Committee could consider applying the revised definitions of "bodily harm" and "great bodily harm," recommended in the Law School Proposal for all crimes against children, to s. 940.26, Stats., relating to hazing. The revised definitions in the Law School Proposal specify the specific types of injuries or impairment of physical condition which constitute bodily harm and great bodily harm. [See discussion in Part I of Discussion Paper 86-1A, dated July 17, 1986.]

[For the specific language suggested in the Law School Proposal, see the following provision of the Proposal: s. 960.02 (2) and (6), Definitions.]

3. Strip Search by School Employe

a. Background

Except for the reordering of subsections of s. 942.02, Stats., the Law School Proposal does not recommend substantive changes in this recently-enacted statute (1983).

b. Suggestion

The Special Committee could consider making no substantive changes in the statute relating to strip searches by school employes.

[For the specific language suggested in the Law School Proposal, see the following provision of the proposal: s. 960.41, Strip Searching Students.]

PART VI

MISCELLANEOUS HEALTH PROVISIONS

A. EXPLANATION OF CURRENT LAW

1. Infant Blindness

a. Description of Infant Blindness Statute

Under s. 146.01 (1), Stats., an attending physician or licensed midwife is required to use a prophylactic agent (silver nitrate), approved by the DHSS, for the prevention of ophthalmia neonatorum or infant blindness. In the case of a confinement of an infant within two weeks after birth, which is not attended by a physician or midwife, the statute requires a nurse, parent or other person in charge to report inflamed, swollen and red eyes or eyes that show an unnatural discharge to a local health officer. The officer is required to immediately warn the person of the danger of such symptoms [s. 146.01 (2), Stats.]. A violation of either provision of the statute is subject to a fine of not more than $100 [s. 146.01 (3), Stats.].

b. Discussion of Relevant Court Decisions and Other Interpretations of the Law

There are no relevant court decisions or other interpretations of s. 146.01, Stats.

2. Lead Poisoning Prevention

a. Description of Lead Poisoning Prevention Statute

Section 151.03 (1), Stats., prohibits any person from applying lead-bearing paints to exposed surfaces on the inside of a dwelling or structure used for the care of children or on any fixture or other object placed in or upon any exposed surface of a dwelling and ordinarily accessible to children. The statute also prohibits persons from selling or transfering a fixture or other object intended to be placed upon any surface on the inside of a dwelling, containing a lead-bearing paint and ordinarily accessible to children [s. 151.03 (2), Stats.]. A violation of the statute is subject to a fine of not more than $300 or imprisonment not to exceed three months, or both, with each day of continued violation constituting a separate offense [s. 151.13 (2), Stats.].

b. Discussion of Relevant Court Decisions and Other Interpretations of the Law

There are no relevant court decisions or other interpretations of s. 151.03, Stats.].

B. SUGGESTIONS FOR STATUTORY REVISIONS

1. Infant Blindness

a. Background

Current s. 146.01, Stats., imposes duties on physicians or licensed midwives and other persons responsible for monitoring the condition of a confined infant, to act to prevent infant blindness and to notify a local health officer of conditions indicating an inflamed or other unnatural condition of the infant's eyes. The violation is subject to a fine of not more than $100.

The Law School Proposal recommends the replacement of the monetary fine with a civil forfeiture. A comment to the Law School Proposal suggests that the failure to decriminalize the statute "...is probably due to an oversight."

b. Suggestion

The Special Committee could consider decriminalizing the penalty for a violation of s. 146.01, Stats., in order to promote enforcement.

[For the discussion of this provision in the Law School Proposal, see page 4 in the Introduction to the Proposal.]

2. Lead Poisoning Prevention

a. Background

Current s. 151.03, Stats., relating to restrictions on the use of lead-bearing paints, is contained in ch. 151, Stats., relating to lead poisoning prevention. This chapter contains provisions which define key terms; require reports of lead poisoning; prescribe DHSS responsibilities; authorize local units of government to enact ordinances establishing a system of lead poisoning control; and provide for shared enforcement responsibilities between the DHSS and local district attorneys.

The Law School Proposal does not recommend substantial changes in s. 151.03, Stats. It does recommend revision of the penalty provision in current s. 151.13, Stats., relating to a violation of s. 151.03, Stats., to conform to the penalty classifications in the Criminal Code. Specifically, the Law School Proposal suggests that the penalty for a violation of s. 151.03, Stats., should be a Class B forfeiture (a forfeiture not to exceed $1,000). Currently, a violation of s. 151.03, Stats., is subject to a fine of not more than $300 and imprisonment not to exceed three months, or both, with each day of continued violation constituting a separate offense.

b. Suggestion

The Special Committee could consider changing the penalty for a violation of s. 151.03, Stats., relating to restrictions on the use of lead-bearing paints, from a misdemeanor (a fine not to exceed $300 or imprisonment not to exceed three months, or both) to a Class B forfeiture (a civil forfeiture not to exceed $1,000), as recommended in the Law School Proposal.

[For the specific language suggested in the Law School Proposal, see the following provision of the Proposal: s. 960.16, Failing to Prevent Lead Poisoning of the Child.]

PART VII

REGULATION OF BOXING

A. EXPLANATION OF CURRENT LAW

1. Description of Regulation of Boxing Statute

Section 444.09 (4), Stats., prohibits any person under the age of 18 years from participating in any professional boxing or sparring exhibition. Amateur contestants between 16 and 18 years of age may participate in amateur boxing or sparring exhibitions with the consent of their parents or guardians under this statute.

Section 444.17, Stats., provides a list of organizations which may hold amateur boxing or sparring exhibitions without being subject to regulation under ch. 444, Stats. These organizations include: any university, college, public school, parochial school or church or religious corporation of the state, the American Legion, the Young Men's Christian Association, various veterans organizations and public recreation departments supported by federal, state or local funds. Under s. 444.16 (1), Stats., a violation of s. 444.09 (4), Stats., or other provision of ch. 444, Stats., is a misdemeanor.

In the absence of a specific misdemeanor penalty, the general penalty provision of the Criminal Code applies. This statute prescribes penalties which apply to violations for which specific statutory penalties are lacking. Under this provision, a person convicted of a misdemeanor for which no penalty is expressed is subject to a fine of not more than $500 or imprisonment not to exceed 30 days, or both [s. 939.61, Stats.].

2. Discussion of Relevant Court Decisions and Other Interpretations of the Law

There are no relevant court decisions or other interpretations of s. 444.09 (4), Stats.].

B. SUGGESTIONS FOR STATUTORY REVISIONS

1. Background

The comment in the Law School Proposal implies that it is unlikely that anyone in recent past has been criminally prosecuted for violating s. 444.09 (4), Stats. If the statute is not being prosecuted, the Law School

Proposal suggests that a "civil forfeiture or administrative sanction should be authorized within the statute itself" in lieu of the criminal sanction.

2. Suggestion

The Committee could seek information from the Department of Regulation and Licensing on whether or not s. 444.09 (4), Stats., has been subject to prosecution recently, as recommended in the Law School Proposal. If it appears that the statute is seldom prosecuted, the Committee could consider decriminalizing the violation (i.e., substituting a civil forfeiture penalty for the current misdemeanor sanction) or creating an administrative sanction in order to enhance enforcement.

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APPENDIX

STATUTES DISCUSSED IN DISCUSSION PAPER 86-1F
(LISTED IN NUMERICAL ORDER)

STATUTES DISCUSSED IN DISCUSSION PAPER 86-1F
(LISTED IN NUMERICAL ORDER)

103.19 CHILDREN IN SHOWS. No license shall be granted for a theatrical exhibition or public show in which children under fifteen years of age are employed as acrobats, contortionists or in any feats of gymnastics or equestrianism, when in the opinion of the board of officers authorized to grant licenses such children are employed in such manner as to corrupt their morals or impair their physical health.

103.20 PENALTY. Any person who shall violate ss. 103.15 (2) or (3), 103.17, 103.18 and 103.19 shall, upon conviction, be fined in a sum not exceeding $100.

103.21 STREET TRADES; DEFINITIONS. As used in ss. 103.21 to 103.31:

(1) Every minor selling or distributing newspapers or magazines on the streets or other public place, or from house to house, is in an "employment" and an "employe," and each independent news agency or (in the absence of all such agencies) each selling agency of a publisher or (in the absence of all such agencies) each publisher, whose newspapers or magazines he sells or distributes, is an "employer" of the minor. Every minor engaged in any other street trade is in an "employment" and an "employe," and each person furnishing him articles for sale or distribution or regularly furnishing him material for blacking boots is his "employer".

(2) "Nonprofit organization" means an organization described in section 501 (c) of the internal revenue code.

(3) "Permit officer" means any person designated by the department to issue street trade permits.

(4) "Private school" has the meaning given in s. 115.001 (3r).

(5) "Public school" has the meaning given in s. 115.01 (1).

(6) "Street trade" means the selling, offering for sale, soliciting for, collecting for, displaying or distributing any articles, goods, merchandise, commercial service, posters, circulars, newspapers or magazines, or the blacking of boots, on any street or other public place or from house to house.

103.22 GENERAL STANDARDS AND POWERS OF THE DEPARTMENT. The general standards for the employment of minors set forth in s. 103.65 apply to the employment of minors in street trades, and in relation to that employment the department has the powers and duties specified in s. 103.66. Except as the department exercises those powers, the employment of minors in street trades shall be in accordance with ss. 103.23 to 103.31.

103.23 AGE MINIMUM. (1) Except as provided in sub. (2), a minor under 12 years of age shall not be employed or permitted to work at any time in any street trade.

(2) A minor under 12 years of age may work in a fund-raising sale for a nonprofit organization, a public school or a private school under the following conditions:

(a) Each minor must give the nonprofit organization, public school or private school written approval from the minor's parent or guardian.

(b) Each minor under 9 years of age or each group containing one or more minors under 9 years of age must be physically accompanied by a parent or a person at least 16 years of age.

103.24 HOURS OF WORK. The department shall determine and fix reasonable hours of employment for minors in street trades.

103.25 PERMITS AND IDENTIFICATION CARDS. (1) A minor under 18 years of age shall not be employed or permitted to work at any street trade unless his employer first obtains from the department or a designated permit officer a street trade permit and the minor first obtains an identification card, both issued in accordance with this section.

(2) If upon investigation, the department determines that there are practical difficulties or unnecessary hardships in carrying out sub. (1), the department may by general or special order make reasonable exceptions or modifications with due regard for the life, health, safety and welfare of minors employed in street trades. The investigation and orders shall be made pursuant to ss. 101.01 to 101.25, and have the same force and effect as orders issued pursuant to those sections. These orders are subject to review as provided in ch. 227.

(3) The form and requisites of street trade permits shall be the same as those specified for child labor permits in s. 103.73, except that the permits may be issued on special street trade permit blanks of a form determined by the department. Each minor for whom a street trade permit is issued shall be provided by the department or the permit officer issuing the permit with a street trade identification card of a form determined by the department. He shall carry the identification card while engaged in street trade employment and shall not transfer it to any other person.

(4) In relation to employment in street trades a permit issued under this section has the same force and effect as a permit issued under ss. 103.64 to 103.82; and the failure to obtain a permit when required under this section subjects the employer to the same penalties and liabilities as failure to obtain a permit when required under ss. 103.64 to 103.82.

(5) This section does not apply to employment of a minor in a fund-raising sale for a nonprofit organization, a public school or a private school.

103.26 REFUSAL OR REVOCATION OF PERMITS AND IDENTIFICATION CARDS. (1) The department or permit officer may refuse to grant a street trade permit and identification card to a minor who seems physically unable to perform the work or whose school record indicates that he should not undertake such employment in addition to school, or whenever in the

judgment of the department or permit officer the best interests of the minor would be served by such refusal.

(2) The department may revoke a street trade permit and identification card if the minor for whom such permit was issued is found by the department to have worked when prohibited under s. 103.24, if it appears to the department that such permit was improperly or illegally issued or if in their judgment the best interests of the minor would be served by such revocation. The department shall by registered mail notify such minor and his employer of such revocation. On receipt of such notice the employer shall immediately return the revoked permit and discontinue the employment of such minor, and the minor shall immediately return the revoked identification card to the permit officer.

103.27 DUTIES OF EMPLOYERS OF MINORS IN STREET TRADES. (1) Every employer of minors in street trades shall keep a record for each minor of his name, address and date of birth.

(2) Every employer shall receive and file a street trade permit authorizing employment of each minor by him or her before the minor is permitted to work; and shall keep the permit on file and allow inspection of the permit at any time by the department or any police or school attendance officer.

(3) This section does not apply to employment of a minor in a fund-raising sale for a nonprofit organization, a public school or a private school.

103.28 ENFORCEMENT. (1) Sections 103.21 to 103.31 shall be enforced by the department. Police and school attendance officers of cities, towns, villages and school districts shall assist the department in enforcement by questioning minors seen on the streets engaged in street trades and reporting to the department all cases of minors apparently engaged in street trades in violation of ss. 103.21 to 103.31.

(2) The failure of an employer to produce for inspection by the department or any school attendance or police officer a permit required for a minor employed in street trades is prima facie evidence of unlawful employment of the minor.

103.29 PENALTIES. (1) (a) Any employer who employs or permits the employment of any minor in street trades in violation of ss. 103.21 to 103.31 or of any order issued thereunder or who hinders or delays the department or any truant or police officer in the performance of their duties under ss. 103.21 to 103.31 may be fined not less than $10 nor more than $100 for each offense, or imprisoned not more than 30 days. Every day during which the violation continues constitutes a separate offense.

(b) In addition to the penalties under par. (a), any employer who employs any minor in violation of s. 103.24 or rules of the department shall be liable, in addition to the wages paid, to pay to each minor affected, an amount equal to twice the regular rate of pay as liquidated damages for all hours worked in violation per day or per week, whichever is greater.

(2) The state may enforce the penalties specified in sub. (1) in a criminal prosecution or, in its discretion, it may recover a forfeiture of not less than $10 nor more than $100 for each offense. The forfeiture shall be recovered in an action of debt in any court of competent jurisdiction.

103.30 PENALTY ON NEWSPAPERS FOR ALLOWING MINORS TO LOITER AROUND PREMISES. A newspaper publisher or printer or person having for sale newspapers or magazines shall not permit any minor under 18 years of age to loiter or remain around any premises where the newspapers or magazines are printed, assembled, prepared for sale or sold when the minor is required under s. 118.15 to attend school. Any person violating this section is guilty of a misdemeanor, and subject to the penalties specified in s. 103.29.

103.31 PENALTY ON PARENT OR GUARDIAN. Any parent or guardian who suffers or permits a minor to be employed in violation of ss. 103.21 to 103.31 or of any order of the department issued thereunder may be fined not less than $5 nor more than $25 for each offense, or imprisoned not more than 30 days.

103.32 RECOVERY OF ARREARS OF WAGES. The department, on behalf of the minor, may sue the employer under s. 109.09 for the recovery of any arrears of wages to which the minor is entitled under this chapter.

103.64 EMPLOYMENT OF MINORS; DEFINITIONS. As used in ss. 103.64 to 103.82:

(1) "Deputy", "employe", "employer", "employment", "frequenter", "general order", "local order", "order", "place of employment", "safe", "safety", "special order" and "welfare" have the meanings given in s. 101.01.

(2) "Nonprofit organization" means an organization described in section 501 (c) of the internal revenue code.

(3) "Permit officer" shall mean any person designated by the department to issue child labor permits.

(4) "Private school" has the meaning given in s. 115.001 (3r).

(5) "Public school" has the meaning given in s. 115.01 (1).

103.65 GENERAL STANDARDS FOR EMPLOYMENT OF MINORS. (1) A minor shall not be employed or permitted to work at any employment or in any place of employment dangerous or prejudicial to the life, health, safety, or welfare of the minor or where the employment of the minor may be dangerous or prejudicial to the life, health, safety or welfare of other employes or frequenters.

(2) No minor shall be employed or permitted to work at any employment for such hours of the day or week, or such days of the week, or at such periods of the day as shall be dangerous or prejudicial to the life, health, safety or welfare of such minor.

103.66 POWERS AND DUTIES OF THE DEPARTMENT. (1) The department may investigate, determine and fix reasonable classifications of employments, places of employment and minimum ages for hazardous employment for minors, and may issue general or special orders prohibiting the employment of minors in employments or places of employment prejudicial to the life, health, safety or welfare of minors, and may carry out the purposes of ss. 103.64 to 103.82.

(2) The department may investigate and fix reasonable classifications of employments and hours of employment for minors and may issue general or special orders fixing maximum hours of employment for minors per day and per week, maximum days of employment per week, hours at which employment shall begin and end and the duration of lunch and other rest periods as are necessary to protect the life, health, safety, and welfare of minors.

(3) The investigations, classifications and orders provided for in subs. (1) and (2) shall be made pursuant to the procedure specified in ss. 101.01 to 101.25. Every order of the department has the same force and effect as the orders issued pursuant to ss. 101.01 to 101.25. These orders are subject to review as provided in ch. 227.

103.67 MINIMUM AGES IN VARIOUS EMPLOYMENTS. (1) A minor 14 to 18 years of age shall not be employed or permitted to work in any gainful occupation during the hours he is required to attend school under s. 118.15 unless he has completed high school, except that minors under 18 may be employed in public exhibitions as provided in s. 103.78.

(2) A minor under 14 years of age shall not be employed or permitted to work in any gainful occupation at any time, except that:

(a) Minors 12 years of age or older may be employed in school lunch programs of the school which they attend.

(b) Minors under 14 years of age may be employed in public exhibitions as provided in s. 103.78.

(c) Minors 12 years of age or older may be employed in street trades, and any minor may work in fund-raising sales for nonprofit organizations, public schools or private schools, as provided in ss. 103.21 to 103.31.

(d) Minors 12 and 13 years of age may be employed as caddies on golf courses, if they use caddy carts.

(e) Minors 12 years of age or older may be employed in agricultural pursuits.

(f) Minors 12 years of age or older may be employed in and around a home in work usual to the home of the employer, if the work is not in connection with or a part of the business, trade or profession of the employer and the type of employment is not specifically prohibited by ss. 103.64 to 103.82 or by any order of the department.

(g) Unless prohibited under s. 103.65, minors 12 years of age or older may be employed under the direct supervision of the minor's parent or guardian in connection with the parent's or guardian's business, trade or profession.

(3) Sections 103.64 to 103.82 do not apply to the employment of a minor engaged in domestic or farm work performed outside school hours in connection with the minor's own home and directly for his parent or guardian.

103.68 HOURS OF LABOR. Except as the department may from time to time issue orders as provided under s. 103.66 (2) regulating the hours of employment of minors, the following schedule of hours shall be deemed to be necessary to protect minors from employment dangerous or prejudicial to their life, health, safety, or welfare and shall apply to minors of the ages specified therein:

(1) No minor under 18 shall be employed or permitted to work at any gainful occupation other than domestic service or farm labor for more than 8 hours in any one day nor more than 40 hours nor more than 6 days in any one week, nor during such hours as he is required under s. 118.15 (2) to attend school.

(2) No minor under sixteen shall be employed or permitted to work in any gainful occupation other than domestic service or farm labor more than twenty-four hours in any one week, nor, except in domestic service, farm labor, or in public exhibitions as defined in s. 103.78, or in street trades as defined in s. 103.21, before seven A.M. nor after six P.M.

(3) At least 30 minutes shall be allowed for each meal period which shall commence reasonably close to 6 a.m., 12 m., 6 p.m. or 12 p.m. or

approximately midway of any work period or at such other times as deemed reasonable by the department. No minor under age 18 shall be employed or permitted to work more than 6 consecutive hours without a meal period.

103.69 COUNCIL ON CHILD LABOR. The council on child labor shall review biennially the hours of employment for minors and the minimum ages for hazardous employment determined by the department under s. 103.66 and make recommendations to the department it deems necessary to protect the life, health, safety and welfare of minors. The department may, by orders issued under s. 103.66, give effect to the recommendations of the council.

103.70 PERMITS NECESSARY FOR MINORS; EXCEPTIONS. (1) Except as otherwise provided in sub. (2) and in ss. 103.21 to 103.31 and 103.78, and as may be provided under s. 103.79, a minor, unless indentured as an apprentice in accordance with s. 106.01, or unless 12 years and over and engaged in agricultural pursuits, shall not be employed or permitted to work at any gainful occupation or employment unless there is first obtained from the department, or from a person designated by the department, a written permit authorizing the employment of the minor within those periods of time stated in the permit, which shall not exceed the maximum hours prescribed by law.

(2) Minors may be employed without permits in any employment limited to work in or around a home in work usual to the home of the employer, if the employment is not in connection with or a part of the business, trade or profession of the employer, is in accordance with the minimum age stated in s. 103.67 (2) (d) and is not specifically prohibited by ss. 103.64 to 103.82 or by any order of the department.

103.71 CONDITIONS FOR ISSUANCE OF PERMITS. (1) Except as provided in s. 103.78, a permit shall not be issued authorizing any minor 14 to 18 years of age to be employed during the hours he is required to attend school under s. 118.15, unless he has completed high school. The department and its designated permit officers shall accept as evidence of the minor's completion of high school either:

(a) A diploma or certificate to this effect issued by the superintendent of public schools or by the principal of the public school last attended by such minor, or in the absence of both the aforementioned persons by the clerk of the proper school board; or

(b) A diploma or certificate to this effect issued by the superintendent of the parochial school system or by the principal of the parochial or private school last attended by such minor. Such superintendent, principal or clerk shall issue such diploma or certificate upon receipt of any application in behalf of any minor entitled thereto. As used in this paragraph the term "school district" shall apply to all regularly constituted school districts, including union free high school districts.

(2) A permit shall not be issued authorizing the employment of any minor under 14 years of age at any time, except minors 12 years of age and over:

(a) In school lunch programs under s. 103.67 (2) (a).

(b) In street trades as provided in ss. 103.21 to 103.31.

(c) As caddies on golf courses as provided in s. 103.67 (2) (d).

(d) In the business, trade or profession of the minor's parent or guardian as provided in s. 103.67 (2) (g).

(3) No permit may be issued under sub. (2) (d), unless the department or permit officer is satisfied that employment under s. 103.67 (2) (g) is not injurious or detrimental to the minor's education, health, safety or welfare.

103.72 REFUSAL AND REVOCATION OF PERMITS. (1) The department or permit officer may refuse to grant permits in the case of minors who seem physically unable to perform the labor at which they are to be employed. They may also refuse to grant a permit if in their judgment the best interests of the minor would be served by such refusal.

(2) Whenever it shall appear to the department that any permit has been improperly or illegally issued, or that the physical or moral welfare of the minor would be best served by the revocation of the permit, the department may forthwith, without notice, revoke the same, and shall by registered mail notify the person employing such minor and the minor

holding such permit of such revocation. Upon receipt of such notice, the employer employing such minor shall forthwith return the revoked permit to the department and discontinue the employment of the minor.

103.73 FORM AND REQUISITES OF PERMIT; AS EVIDENCE. (1) The permit provided under s. 103.70 shall state the name and the date and place of birth of the minor and that the following evidence, records and papers have been examined, approved and filed:

(a) Such evidence as is required by the department showing the age of the minor. The department shall formulate and publish rules and regulations governing the proof of age of minors who apply for labor permits, and such rules and regulations shall bind all persons authorized by law to issue such permits.

(b) A letter written on the regular letterhead or other business paper used by the person who desires to employ the minor, stating the intention of such person to employ such minor and signed by such person or someone duly authorized by him.

(2) The permits provided under s. 103.70 shall be issued upon blanks furnished by the department.

(3) A child labor permit duly issued shall be conclusive evidence of the age of the minor for whom it was issued in any proceeding under any of the labor laws and under ch. 102, as to any act or thing occurring subsequent to the date such permit was issued.

103.74 DUTIES OF EMPLOYERS OF MINORS. Every employer employing a minor under 18 for whom a permit is required, except in street trades, shall:

(1) Receive and file a child labor permit authorizing employment of the minor by him or her before the minor is permitted to do any work, and shall keep the permit on file and allow inspection of the permit at any time by the department or any school attendance officer. A permit shall be valid only for the employer for whom issued.

(2) Keep a record for each minor employed of his name, address, date of birth, the time of beginning and ending work and the time for meals each day and the total hours worked each day and each week.

103.75 CERTIFICATES OF AGE. (1) The department or persons designated by it may issue certificates of age for minors under rules the department deems necessary. The certificate is conclusive evidence of the age of the minor to whom issued in any proceeding under any of the labor laws and under ch. 102 as to any act or thing occurring subsequent to the date the certificate was issued.

(2) Any person who knowingly offers or assists in offering false evidence of age for the purpose of obtaining an age certificate or who alters, forges, fraudulently obtains, uses, or refuses to surrender upon demand of the department a certificate of age may be fined not more than $100 or imprisoned not to exceed 3 months.

103.76 PROOF OF AGE IN COURT. Whenever in any proceeding in any court under any of the labor laws or under ch. 102 there is any doubt of the age of a minor a duly issued child labor permit or age certificate shall be conclusive evidence. In the absence of such permit or certificate a duly attested birth certificate or a verified baptismal certificate shall be produced and filed with the court. Upon proof that the birth or baptismal certificate cannot be secured, the record of age stated in the first school enrollment of the child shall be admissible as evidence thereof.

103.78 MINORS IN PUBLIC EXHIBITIONS, RADIO AND TELEVISION BROADCASTS, MODELING. (1) Nothing contained in ss. 103.64 to 103.82 shall be construed as forbidding any minor under 18 years of age to appear for the purpose of singing, playing or performing in any studio, circus, theatrical or musical exhibition, concert or festival, in radio and television broadcasts, or as a live or photographic model. Labor permits shall not be required for such employment or appearances but no minor

under 18 years of age shall be so employed except under the following conditions:

(a) The activities enumerated shall not be detrimental to the life, health, safety or welfare of the minor.

(b) The activities enumerated shall not interfere with the schooling of the minor and provision for education equivalent to full-time school attendance in the public schools for minors under 16 years of age and part-time attendance for minors 16 to 18 years of age shall be made for those minors who are not high school graduates.

(c) A parent or guardian shall accompany each minor under 16 years of age at all rehearsals, appearances and performances.

(d) The employment or appearance shall not be in a roadhouse, cabaret, dance hall, night club, tavern or other similar place. This prohibition does not apply to:

1. Minors presenting musical entertainment at dances held in any hall on Friday, Saturday or on any other day not followed by a school day or before midnight on Sunday, if the hall was rented for the purpose of celebrating a special event, including but not limited to a wedding, holiday, birthday or anniversary.

2. Dances held solely for minors conducted by private clubs or civic organizations where admission is limited to the membership of the club or by their invitation and the general public is excluded.

3. Performances by minors in theatrical performances at dinner theaters.

(2) The penalties in s. 103.82 (1) and (2) apply to any employer who violates this section.

(3) The penalties in s. 103.82 (3) apply to any parent or guardian who suffers or permits a minor to engage in activities in violation of this section.

(4) Treble the amount of compensation otherwise recoverable as provided in s. 102.60 (4) and wage loss as provided in s. 102.60 (6) are payable to a minor under 18 years of age injured during the course of his employment or appearance in violation of this section.

103.79 MINOR GOLF CADDIES. (1) Any minor on a golf course for the purpose of caddying for or while caddying for a person permitted to play golf on such course shall be deemed an employe of the golf club or other person, partnership, association or corporation, including the state and any municipal corporation or other political subdivision thereof, operating such golf course.

(2) The department may investigate and fix by general or special order reasonable regulations relative to the employment of minors as caddies on golf courses. The regulations may include a waiver or modification of permit requirements for caddies. The investigations and orders shall be made pursuant to ss. 101.01 to 101.25, and every such order has the same force and effect as orders issued pursuant to ss. 101.01 to 101.25. The orders are subject to review as provided in ch. 227.

103.80 INSPECTION. (1) The department and school attendance officers shall visit and inspect at all reasonable times, and as often as possible, all places covered by ss. 103.64 to 103.82.

(2) The failure of any employer to produce for inspection to the department, or school attendance officers, the permit provided for in s. 103.70 shall be prima facie evidence of unlawful employment of the minor. The presence of any minor in any factory, workshop or other place of employment shall be prima facie evidence of the employment of the minor.

103.81 ADVERTISING; PENALTY. (1) During the term that the public schools are in session, a person shall not advertise or cause or permit any advertisement to be published in any newspaper for the labor or services of any minor during school hours in any employment for which a child labor permit is required under s. 103.70 which does not specifically state the minimum age of the minor whose services are desired, which age must be 18 years or over.

(2) A person shall not solicit in the schools or homes of this state, minors of permit age to leave school and enter their employment, if a child labor permit is required for that employment by s. 103.70.

(3) Any person who violates this section shall forfeit and pay into the state treasury not less than $10 nor more than $100 for each such offense. Every day during which any person violates this section shall constitute a separate and distinct offense.

103.82 PENALTIES. (1) (a) Any employer who employs or permits any minor to work in any employment in violation of ss. 103.64 to 103.82, or of any order of the department issued under those sections, or who hinders or delays the department or school attendance officers in the performance of their duties, or who refuses to admit or locks out the officer from any place required to be inspected under ss. 103.64 to 103.82 may be fined not less than $10 nor more than $100 for each offense, or imprisoned not more than 30 days. Every day during which the violation continues constitutes a separate offense.

(b) In addition to the penalties provided in par. (a), any employer who employs any minor in violation of s. 103.68, or rules of the department shall be liable, in addition to the wages paid, to pay to each minor affected, an amount equal to twice the regular rate of pay as liquidated damages, for all hours worked in violation per day or per week, whichever is greater.

(2) The state may enforce the penalties specified in sub. (1) in a criminal prosecution or, in its discretion, it may recover a forfeiture of not less than $10 nor more than $100 for each offense. The forfeiture shall be recovered in an action of debt in any court of competent jurisdiction.

(3) Any parent or guardian who permits a minor to be employed or to work in violation of ss. 103.64 to 103.82, or of any order of the department issued under those sections, may be fined not less than $5 nor more than $25 for each offense, or imprisoned not more than 30 days.

103.85 ONE DAY OF REST IN SEVEN. (1) Every employer of labor, whether a person, partnership or corporation, who owns or operates any

factory or mercantile establishment in this state, shall allow every person, except those specified in sub. (2), employed in such factory or mercantile establishment, at least 24 consecutive hours of rest in every 7 consecutive days and shall not permit any such person to work for such employer during such 24 consecutive hour period, except in case of breakdown of machinery or equipment, or other emergency, requiring the immediate services of experienced and competent labor to prevent serious injury to person, damage to property, or suspension of necessary operations, when such experienced and competent labor is not otherwise immediately available. This shall not authorize any work on Sunday not now authorized by law.

(2) This section does not apply to:

(a) Janitors.

(b) Security personnel.

(c) Persons employed in the manufacture of butter, cheese or other dairy products or in the distribution of milk or cream, or in canneries and freezers.

(d) Persons employed in bakeries, flour and feed mills, hotels, and restaurants.

(e) Employes whose duties include no work on Sunday other than:

1. Caring for live animals.

2. Maintaining fires.

(f) Any labor called for by an emergency that could not reasonably have been anticipated.

(3) Every employer shall keep a time book showing the names and addresses of all employes and the hours worked by each of them in each day, and such time book shall be open to inspection by the department.

(4) If upon investigation, the department shall ascertain and determine that there be practical difficulties or unnecessary hardships in carrying out the provisions of this section, or upon a joint request of labor and management, the department may by general or special order make reasonable exceptions therefrom or modifications thereof provided that the life, health, safety and welfare of employes shall not be sacrificed or endangered thereby. Such investigation and orders shall be made pursuant to the proceedings in ss. 101.01 to 101.25; and every order of the department under this section shall have the same effect as orders issued

pursuant to said sections. Such orders shall be subject to review under ch. 227.

(5) Every employer who violates this section shall be punished as provided in s. 101.02 (13).

103.86 EMPLOYE WELFARE FUNDS: DEFAULT IN PAYMENTS. (1) Any employer who promises in writing to make payments to an employe welfare fund, either by contract with an individual employe, by a collective bargaining agreement or by agreement with such employe welfare fund, and who fails to make such payments within 6 weeks after they become due and payable, and after having been notified in writing of his failure to make the required payments, shall be fined not more than $200.

(2) This section shall not apply where the failure to make payments is prevented by act of God, proceedings in bankruptcy, orders or process of any court of competent jurisdiction, or circumstances over which the employer has no control.

118.13 PUPIL DISCRIMINATION PROHIBITED. (1) No person may be denied admission to any public school or be denied participation in, be denied the benefits of or be discriminated against in any curricular, extracurricular, pupil services, recreational or other program or activity because of the person's sex, race, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.

(2) (a) Each school board shall develop written policies and procedures to implement this section and submit them to the state superintendent as a part of its 1986 annual report under s. 120.18. The policies and procedures shall provide for receiving and investigating complaints by residents of the school district regarding possible violations of this section, for making determinations as to whether this section has been violated and for ensuring compliance with this section.

(b) Any person who receives a negative determination under par. (a) may appeal the determination to the state superintendent.

(3) (a) The state superintendent shall:

1. Decide appeals made to him or her under sub. (2) (b). Decisions of the state superintendent under this subdivision are subject to judicial review under ch. 227.

2. Promulgate rules necessary to implement and administer this section.

3. Include in the department's biennial report under s. 15.04 (1) (d) information on the status of school district compliance with this section and school district progress toward providing reasonable equality of educational opportunity for all pupils in this state.

(b) The state superintendent may:

1. Periodically review school district programs, activities and services to determine whether the school boards are complying with this section.

146.01 INFANT BLINDNESS. (1) For the prevention of ophthalmia neonatorum or infant blindness the attending physician or midwife shall use a prophylactic agent approved by the department.

(2) In a confinement not attended by a physician or midwife, if one or both eyes of an infant becomes inflamed, swollen and red or show an unnatural discharge at any time within 2 weeks after birth, the nurse, parents, or other person in charge shall report the facts in writing within 6 hours to the local health officer who shall immediately warn the person of the danger. The local health officer shall employ at the expense of the municipality a competent physician to examine and treat the case.

(3) Any person who violates this section shall be fined not more than one hundred dollars.

151.03 PROHIBITED ACTS. (1) No person may apply lead-bearing paints:

(a) To any exposed surface on the inside of a dwelling;

(b) To the exposed surface of a structure used for the care of children; or

(c) To any fixture or other object placed in or upon any exposed surface of a dwelling and ordinarily accessible to children.

(2) No person may sell or transfer any fixture or other object intended to be placed upon any surface on the inside of a dwelling, containing a lead-bearing paint and ordinarily accessible to children.

151.13 ENFORCEMENT; PENALTY. (1) ENFORCEMENT. The department shall report any violation of this chapter to the district attorney of the county in which the dwelling is located. The district attorney shall enforce this chapter. A circuit court may order the occupants of the affected dwelling to withhold rent in escrow until the lead-bearing paints are removed, replaced or securely and permanently covered.

(2) PENALTY. Any person who violates this chapter may be fined not more than $300 or imprisoned not more than 3 months or both. Each day of continued violation constitutes a separate offense.

444.09 CONDUCT OF EXHIBITIONS REGULATED.

(4) No person under the age of 18 years shall participate in any professional boxing or sparring exhibition. Amateur contestants between 16 and 18 years of age may participate in amateur boxing or sparring exhibitions with the consent of their parents or guardians.

444.16 VIOLATION, WHEN A MISDEMEANOR. (1) A violation of any provision of this chapter, for which a penalty is not herein expressly prescribed, is a misdemeanor.

(2) In addition to any other remedies, the several district attorneys or the attorney general are authorized to bring action in the name of the state to enjoin violations of this chapter or the rules of the department.

444.17 ORGANIZATIONS EXEMPTED. (1) This chapter does not apply to amateur boxing or sparring exhibitions held under the auspices and upon the premises of any university, college, state university, high school, public school, parochial school or of any church or religious corporation of the state in intramural, interscholastic or intercollegiate or other competition if the participants therein are bona fide members of such church or religious corporation or students of their respective schools. All such boxing or sparring exhibitions shall be by and with the consent of, and under the supervision of the governing body of such university, college, state university, high school, public school, parochial school or church or religious corporation.

(2) This chapter does not apply to exhibitions conducted by the American Legion, the Young Men's Christian Association, United Spanish War Veterans, Veterans of Foreign Wars or the Disabled American Veterans of the World War, for which no admission fee is charged. Any contribution shall be considered an admission fee. No such boxing or sparring exhibitions shall be conducted as a part of any program where an admission fee is charged.

(3) This chapter does not apply to amateur boxing or sparring exhibitions conducted by or held under the auspices of any public recreation department supported by town, village, city, county, state or federal funds, in any intradepartmental or interdepartmental exhibitions, provided: (a) that such exhibitions are between bona fide members of boxing classes conducted by such public recreation departments, (b) that such public recreation departments are members of a recognized state association of public recreation departments, (c) and that each such amateur boxing or sparring exhibition is sanctioned by the department. The application for the sanction of each exhibition shall be made in writing to the department at least 2 weeks prior to the exhibition. A fee of $5 shall accompany the application, said fee to cover the cost of

sanction and expenses of an inspector, whose duty it shall be to enforce all rules and regulations and to see that a competent referee, timer, doctor and judges are employed. Sanction for such exhibitions may be denied for cause upon competent evidence.

939.22 WORDS AND PHRASES DEFINED.

(4) "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.

(14) "Great bodily harm" means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

939.50 CLASSIFICATION OF FELONIES. (1) Except as provided in ss. 946.83 and 946.85, felonies in chs. 939 to 948 are classified as follows:

(a) Class A felony.

(b) Class B felony.

(c) Class C felony.

(d) Class D felony.

(e) Class E felony.

(2) A felony is a Class A, B, C, D or E felony when it is so specified in chs. 939 to 948.

(3) Penalties for felonies are as follows:

(a) For a Class A felony, life imprisonment.

(b) For a Class B felony, imprisonment not to exceed 20 years.

(c) For a Class C felony, a fine not to exceed $10,000 or imprisonment not to exceed 10 years, or both.

(d) For a Class D felony, a fine not to exceed $10,000 or imprisonment not to exceed 5 years, or both.

(e) For a Class E felony, a fine not to exceed $10,000 or imprisonment not to exceed 2 years, or both.

939.51 CLASSIFICATION OF MISDEMEANORS. (1) Misdemeanors in chs. 939 to 948 are classified as follows:

(a) Class A misdemeanor.

(b) Class B misdemeanor.

(c) Class C misdemeanor.

(2) A misdemeanor is a Class A, B or C misdemeanor when it is so specified in chs. 939 to 948.

(3) Penalties for misdemeanors are as follows:

(a) For a Class A misdemeanor, a fine of not to exceed $10,000 or imprisonment not to exceed 9 months, or both.

(b) For a Class B misdemeanor, a fine not to exceed $1,000 or imprisonment not to exceed 90 days, or both.

(c) For a Class C misdemeanor, a fine not to exceed $500 or imprisonment not to exceed 30 days, or both.

939.52 CLASSIFICATION OF FORFEITURES. (1) Except as provided in s. 946.85, forfeitures in chs. 939 to 948 are classified as follows:

(a) Class A forfeiture.

(b) Class B forfeiture.

(c) Class C forfeiture.

(d) Class D forfeiture.

(2) A forfeiture is a Class A, B, C or D forfeiture when it is so specified in chs. 939 to 948.

(3) Penalties for forfeitures are as follows:

(a) For a Class A forfeiture, a forfeiture not to exceed $10,000.

(b) For a Class B forfeiture, a forfeiture not to exceed $1,000.

(c) For a Class C forfeiture, a forfeiture not to exceed $500.

(d) For a Class D forfeiture, a forfeiture not to exceed $200.

939.61 PENALTY WHEN NONE EXPRESSED. (1) If a person is convicted of an act or omission prohibited by statute and for which no penalty is expressed, the person shall be subject to a forfeiture not to exceed $200.

(2) If a person is convicted of a misdemeanor under state law for which no penalty is expressed, the person may be fined not more than $500 or imprisoned not more than 30 days or both.

(3) Common law penalties are abolished.

940.26 HAZING. (1) In this section "forced activity" means any activity which is a condition of initiation or admission into or affiliation with an organization, regardless of a student's willingness to participate in the activity.

(2) No person may intentionally or recklessly engage in acts which endanger the physical health or safety of a student for the purpose of initiation or admission into or affiliation with any organization operating in connection with a school, college or university. Under those circumstances, prohibited acts may include any brutality of a physical nature, such as whipping, beating, branding, forced consumption of any food, liquor, drug or other substance, forced confinement or any other forced activity which endangers the physical health or safety of the student.

(3) Whoever violates sub. (2) is guilty of:

(a) A Class A misdemeanor if the act results in or is likely to result in bodily harm to another.

(b) A Class E felony if the act results in great bodily harm or death to another.

942.02 STRIP SEARCH BY SCHOOL EMPLOYE. (1) The legislature intends, by enacting this section, to protect pupils from being strip searched. By limiting the coverage of this section, the legislature is not condoning the use of strip searches under other circumstances.

(2) In this section:

(a) "School" means a public, parochial or private school which provides an educational program for one or more grades between kindergarten and grade 12 and which is commonly known as a kindergarten, elementary school, middle school, junior high school, senior high school or high school.

(b) "Strip search" means a search in which a person's genitals, pubic area, buttock or anus, or a female person's breast, is uncovered and either is exposed to view or is touched by a person conducting the search.

(3) Any official, employe or agent of any school or school district who conducts a strip search of any pupil is guilty of a Class B misdemeanor.

(4) This section does not apply to a search of any person who:

(a) Is serving a sentence, pursuant to a conviction, in a jail, state prison or house of correction.

(b) Is placed in or transferred to a secured correctional facility.

(c) Is committed, transferred or admitted under ch. 51, 971 or 975.

(5) This section does not apply to any law enforcement officer conducting a strip search under s. 968.255.

943.34 RECEIVING STOLEN PROPERTY. Whoever intentionally receives or conceals stolen property is guilty of:

(1) A Class A misdemeanor, if the value of the property does not exceed $500 but if the property is received from a person under the age of 18 years, the person is guilty of a Class E felony.

(2) A Class E felony, if the value of the property exceeds $500 but not more than $2,500.

(3) A Class C felony, if the value of the property exceeds $2,500.

943.35 RECEIVING PROPERTY FROM CHILDREN. Whoever does either of the following is guilty of a Class A misdemeanor:

(1) As a dealer in secondhand articles or junk, purchases any personal property, except old rags and waste paper, from any minor, without the written consent of his parent or guardian; or

(2) As a pawnbroker or other person who loans money and takes personal property as security therefor, receives personal property as security for a loan from any minor without the written consent of his parent or guardian.

946.63 CONCEALING DEATH OF CHILD. Any woman who conceals the corpse of any issue of her body with intent to prevent a determination of whether it was born dead or alive is guilty of a Class E felony.

to 948 are classified as follows:

(a) Class A felony.

(b) Class B felony.

(c) Class C felony.

(d) Class D felony.

(e) Class E felony.

(2) A felony is a Class A, B, C, D or E felony when it is so specified in chs. 939 to 948.

(3) Penalties for felonies are as follows:

(a) For a Class A felony, life imprisonment.

(b) For a Class B felony, imprisonment not to exceed 20 years.

(c) For a Class C felony, a fine not to exceed $10,000 or imprisonment not to exceed 10 years, or both.

(d) For a Class D felony, a fine not to exceed $10,000 or imprisonment not to exceed 5 years, or both.

(e) For a Class E felony, a fine not to exceed $10,000 or imprisonment not to exceed 2 years, or both.